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CLEARINGHOUSE RULE 99-153

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. Section 950.08 (3), Stats., provides that the Department of Justice (DOJ) may receive complaints, seek to mediate complaints and actually mediate complaints regarding the treatment of crime victims and witnesses by public officials, employees or agencies or under crime victim and witness assistance programs. Section 950.09 (2), Stats., provides that the Crime Victims Rights Board may review a complaint made to DOJ and that a party may not request the board to review such a complaint until DOJ has completed its action. The statutes clearly envision that all complaints be routed through DOJ before the board becomes involved. However, s. CVRB 1.05 (5) provides that a complaint that names an employee of DOJ as a respondent need not be presented to the department before being presented to the board. While the rule provision appears to be an attempt to avoid a conflict of interest, what statutory authority exists for the rule provision?

b. Section CVRB 1.11 (2) and (3) in general contain provisions that prohibit actions against any person who attempts to vindicate crime victims' rights. What statutory authority exists for the creation of these substantive prohibitions and what statutory authority exists for their enforcement?

2. Form, Style and Placement in Administrative Code

a. Section 227.15 (1), Stats., provides in part that an agency may not hold a public hearing on a proposed rule until after it has received a written report of the Legislative Council Staff review of the proposed rule or until after the initial review period of 20 working days, whichever comes first. Clearinghouse Rule 99-153 was received by the Legislative Council Staff on November 1, 1999 and, according to the rule submission, a public hearing on the rule was held on November 9, 1999. The hearing should not have occurred prior to the receipt of the Clearinghouse report.

b. The text of the rule-making order must be divided into sections. Therefore, “SECTION 1. CVRB 1 is created to read:” should be inserted at the beginning of the text of the rule.

c. In s. CVRB 1.05 (9), the first sentence does not grammatically lead into the following subunits. Consequently, either the first sentence should be renumbered as par. (a), and the remaining paragraphs renumbered accordingly, or all four sentences should be collapsed into one subsection. [See also s. CVRB 1.11 (2) and s. 1.03 (8), Manual.]

d. An effective date clause must be inserted at the end of the rule text. [See s. 1.02 (4), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. CVRB 1.02 (11), the drafter may wish to cite s. 950.02 (4), Stats., instead of s. 950.02 (4) (a), Stats., to clarify that “victim” does not include the person charged with or alleged to have committed the crime. [See s. 950.02 (4) (b), Stats.]

b. Section CVRB 1.04 (2) refers to a form. The agency should ensure that the requirements of s. 227.14 (3), Stats., are met.

c. In s. CVRB 1.05 (8) (c), it appears that the reference to sub. (3) should be replaced with a reference to sub. (4). Also, “of this section” should be deleted.

d. In s. CVRB 1.08 (5), “sub.” should be replaced with “subs.” Also, “of this section” should be deleted.

e. In s. CVRB 1.11 (2) (c), the word “subdivision” should be replaced by the word “subsection.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. CVRB 1.04 (1), “but not limited to” could be deleted. This comment also applies to s. CVRB 1.05 (8).

b. In s. CVRB 1.04 (3), why is the remedy limited to equitable relief if the complaint is not filed or signed by the victim? Section 950.09 (2), Stats., does not include such a limitation.

c. In s. CVRB 1.04 (5), “alleged” in the second sentence could be replaced with “complaints alleging.”

d. In s. CVRB 1.05 (6), should the word “may” be replaced by the word “shall”?

e. In s. CVRB 1.05 (7), in order to be consistent with ss. CVRB 1.07 (9) and 1.08 (1), an appropriate cross-reference to s. 19.85, Stats., should be included.

f. In s. CVRB 1.05 (8), “all of the following” should be inserted after “including.” Also in that subsection, the sentences in pars. (a) to (c) should begin with a capital letter. This comment also applies to s. CVRB 1.07 (3) (a) and (b).

g. In s. CVRB 1.05 (9) (a), it would be helpful to insert “under s. CVRB 1.07” after “a hearing.” [See also s. CVRB 1.06 (3).]

h. In s. CVRB 1.06 (2), it may be clearer to replace “limited release” with a phrase such as “statement authorizing the limited release of specified records.” Also, sub. (2) provides that a party who was asked to sign a release may request a protective order from the board limiting the disclosure of any limited-release records outside the board’s process. This appears to mean that these records may not be distributed for purposes other than the board’s proceedings. However, sub. (3) provides that the board may also limit distribution of limited-release records to parties within a proceeding. Either sub. (2) should be amended to avoid any conflict with sub. (3) or documents in a proceeding should not be subject to any protective orders regarding release.

i. In s. CVRB 1.08 (2), should “if no hearing is held” be inserted after “or by another date established by the board”? Also, it would be helpful to insert a phrase such as “a recommended” before “remedy.”

j. In s. CVRB 1.09 (1), “20 days of” should be replaced with “20 days after.” Also, the drafter may wish to use a more specific date than the date the final decision is provided to the parties for the commencement of the time limitation. As currently drafted, it is unclear whether 20 days should be counted from the date the final decision is made or from the date it is received by the parties. Perhaps the date the final decision is issued should be used.

k. In s. CVRB 1.11 (3), “these rules” should be replaced with “this chapter.”

l. In s. CVRB 1.11 (4), “these” should be deleted and “under this chapter” should be inserted after “proceedings.”